



California Fair Political Practices Commission

July 14, 1986

Ann C. Vasquez
7541 Clement Circle
Sacramento, CA 95823

Re: Your Request for Advice
Our File No. A-86-193

Dear Ms. Vasquez:

Thank you for your letter requesting advice concerning your duties under the conflict of interest provisions of the Political Reform Act.^{1/}

QUESTION

You have asked if starting your own corporation would be in conflict with your employment as Chief of the Radiological Programs Division of the Office of Emergency Services.

CONCLUSION

The Political Reform Act does not prohibit you from starting a private business but will prohibit you from participating in decisions which will have a reasonably foreseeable material financial effect on your business or on clients who have been a source of income to you of \$250 or more in the preceding 12 months. It is possible there may be a conflict under your agency's Statement of Incompatible Activities. It is suggested you investigate further.

FACTS

You are a Program Manager II in the Radiological Programs Division of the State Office of Emergency Services (OES). In such capacity you manage and supervise the Nuclear Power

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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Preparedness, Radiological Planning and Radiological
Instrumentation Sections of OES.

In 1985, the Legislature passed a bill (AB 2185) which would require all businesses handling hazardous materials to file statements with their respective counties identifying the types, amounts and storage locations of hazardous materials used by them. The bill requires OES to develop regulations to be used by counties in preparing county plans for responding to incidents involving hazardous materials. OES is also required to develop a suggested hazardous materials disclosure form for the counties to provide to local businesses. The counties may, however, develop their own forms. The Office of Emergency Services is further responsible to review the response plans prepared by the counties.

OES has now developed the regulations and suggested disclosure form required by AB 2185. The regulations and the form were developed by another division within OES. However, you provided a written review.

You are contemplating starting your own corporation which will provide training seminars on farm management of hazardous materials as well as educating local businesses, farms and ranches in the correct manner to complete their disclosure statements.

ANALYSIS

The Political Reform Act does not prevent officials from holding a particular financial interest but rather requires public officials to abstain from participating in decisions which may affect their financial interests. Section 87100 prohibits any public official from making, participating in, or attempting to use his official position to influence any governmental decision in which he knows, or has reason to know, he has a financial interest.

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family or on:

- (a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

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(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a), (c) and (d).

Accordingly, you may not participate in future development of regulations or forms if it is reasonably foreseeable that decisions regarding the forms or regulations will have a reasonably foreseeable material financial effect on your business or on clients who have been a source of income of \$250 or more in the preceding 12 months.

The Commission has adopted regulations 2 Cal. Adm. Code Sections 18702, 18702.1 and 18702.2 (copies enclosed) which are used to measure whether the reasonably foreseeable effects of a decision will be considered "material." If you would like assistance in applying these regulations to a particular factual situation, please let us know.

You should also be aware that Commission regulation 2 Cal. Adm. Code Section 18700.1(c) provides that with regard to a decision which is before an agency, other than the official's agency or an agency appointed by or subject to the budgetary control of his agency, the official is attempting to use his official position to influence the decision if, for the purpose of influencing the decision:

... the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationery.

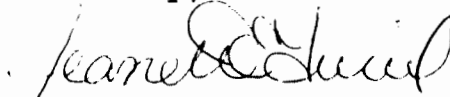
Therefore you should make clear in your dealings with local government agencies when you are and are not representing the views of OES.

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You should also review OES's Statement of Incompatible Activities to determine whether it may prohibit or restrict your establishment of and involvement with this type of business.

I hope this answers your question. If you have anything further or need assistance, please feel free to contact me at (916) 322-5901.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeanette E. Turvill".

Jeanette E. Turvill
Legal Assistant
Legal Division

JET:plh
Enclosures

427-4015

June 11, 1986

F P P C
JUN 12 8 25 AM '86

Robert Leidigh, Counsel
Fair Political Practices Commission
1100 K Street
P. O. Box 807
Sacramento, CA 95804

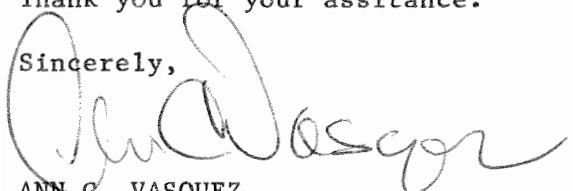
Dear Mr. Leidigh:

I am presently evaluating the possibility of starting my own corporation and, before I launch such a venture, I would like a written opinion on the possibility of a conflict of interest.

I have attached a copy of my current duty statement, a statement of the types of decisions I make in my current position, a synopsis of the services to be performed by my proposed operation, a copy of the State Office of Emergency Services Conflict of Interest Code and a statement, prepared by OES, indicating the disclosure categories applicable to my position. Regarding the disclosure categories, please note that I should have also reported holdings (none) in Category 2N. Failure of OES to require this information from me was an error.

Thank you for your assistance.

Sincerely,



ANN C. VASQUEZ
7541 Clement Circle
Sacramento, CA 95823

Duty Statement

PROGRAM MANAGER II (PM II) Radiological Programs Division

The Program Manager II (Radiological Programs) manages and supervises the Nuclear Power Preparedness, Radiological Planning and Radiological Instrumentation sections (See Organization Chart).

The Program Manager II (REP) has overall management, supervision and administrative responsibilities for the Radiological Programs Division for the Office of Emergency Services.

35% Management. These duties relate to programs design and development. They include directing the fiscal and operational planning of all statewide radiological programs, designing, organizing and review of federal, state and local regulations, laws and studies, development of program goals and objectives, identifying program issues, determining their resolution and directing implementation of resolutions. Included herein is the responsibility for encouraging state agencies and local jurisdictions to participate in state, federal program goals, and for providing direction and policy determinations in the conduct of emergency activities, and program guidance to management of participating agencies.

20% Administration. These duties relate to ensuring available resources to meet program requirements. Duties include directing and overseeing development, performance and compliance to constraints of federal funding grants/contracts, consultant contracts, and constraints on funding provided by the nuclear power industry (per SB 1473, 1982). Also included are responsibilities for determining application of staffing resources, identifying and justifying amendments to staffing patterns, including seeking new staff positions, amending staff duties with special considerations to bargaining units, and ensuring adequate staff training. Further duties are identification and/or design development, or improvement of radiological programs facilities.

30% Supervision. These duties relate to directing staff in performance of program work and include directing program supervisors to develop program work schedules and staff assignments, reviewing assignments, program products and deadlines, identifying program shortfalls and directing their correction through program supervisors. As conflicts or problems in staff performance arise, arbitrates and/or negotiates solutions.

Program Manager II

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10%

Emergency Response. These duties as assigned by state emergency plans. Duties include participating in drills, training, exercises and operations relating to all radiological emergencies. Further duties include overseeing state and local training and exercise standards, and negotiating, as appropriate, amendments to federal standards. .

Other Duties. Included are the development of reports and briefings for the Director's office, the Governor's office, and press briefings, preparation of expert testimony for Congressional committees, Public Utilities Commissions, etc.

RADIOLOGICAL PROGRAMS DIVISION

PROGRAM MANAGER II

Ann Vasquez

SECTION
SECTION

RADIOLOGICAL INSTRUMENTATION/
MAINTENANCE & CALIBRATION SECTION

NUCLEAR POWER PLANT
PLANNING SECTION

FFICER
ttt

SENIOR INSTRUMENT TECHNICIAN

George Lee

SENIOR HEALTH PHYSICIST

Ben Tong

CRETARY
chy Iwanaga

SECRETARY
Brenda Duenas

RADIOLOGICAL
COORDINATOR
v Johnson

EMERGENCY
COORDINATOR
Angelo Corso

SENIOR
RADIOLOGICAL
COORDINATOR
Rich Powers

ACCOUNT CLERK
Gail Renschler

INTERMITTENT
Ken Fess

INTERMITTENT
Ray Holland

REGIONAL
CALIBRATION
LABORATORY
(Being developed)

RADIOLOGICAL
INSTRUMENT
TECHNICIAN
Delmar Schroeder

RADIOLOGICAL
INSTRUMENT
TECHNICIAN
Francis Mateo

Anne C. Vasquez
Types of Decisions

The following is a synopsis of the areas and types of decisions I make in my position as Chief, Radiological Programs Division. All of these decisions effect or involve federal, state and local government. No private entities are directly involved.

A. Planning

I establish, in concert with federal agencies, the annual planning goals. That means I decide how many local government radiological plans my staff will help develop. These plans address both preparation for nuclear war and preparation for local government response to spills of radiological materials.*

I direct my staff to provide written comments on local plans and to help local government test their plans by conducting drills and exercises.

I also direct review, when asked, of state agency plans and review of plans on other topics developed by other divisions.

Planning contracts are let by the Nuclear Power Preparedness Section of my Division. Those contracts are for the hire of private corporations to assist cities and counties in nuclear power plant emergency planning. I oversee that process.

B. Training

I direct the establishment of, and participate in, radiological training seminars for state and local government employees. I decide course content, contractors to be hired to assist in training, and all other aspects of the courses. These courses are available to government employees only.

- C. Instrument Program I direct the distribution, maintenance, calibration and repair of over 100,000 pieces of radiation detection and measurement instruments. These efforts are carried out through the OES Radiation Maintenance and Calibration Laboratory, which is also under my direction. These instruments are provided to governmental agencies only.

Types of Decisions, 2

Contracts issued relating to this program are for building of walls/cabinets, purchase of specialized computer and/or radiation calibration equipment, installation of air condition systems in the shop, etc. I establish the criteria for contract proposals, review bids, and select contractors.

- D. Other. I make other decisions relating to overall division administration, staff assignments, etc. All of these decisions relate to government employees only.

Anne C. Vasquez
Statement of Corporate Intent

I. History

In 1985, California Legislature passed landmark legislation (AB 2185) requiring all businesses handling hazardous materials -- including radiological -- to file documents with the counties identifying the hazardous substances, and the amount and storage location of those substances. The bill also requires the Office of Emergency Services develop regulations (planning standards) to be used by the counties in preparing county plans for responding to incidents involving hazardous materials. OES was also required to provide a suggested disclosure form for the counties to promulgate to local businesses. Counties may, in fact, develop any disclosure form they want for local businesses to report their hazardous substance holdings. Once in place, local businesses will have to report to the counties, using county forms, the type and location of all hazardous substances.

II. Current

With the development of planning regulations complete, OES is now responsible for reviewing the county hazardous response plans. OES has no authority for reviewing or in any way impacting the local disclosure forms or information contained thereon.

III. Proposed Corporate Intent

My corporation, assuming no conflict of interest, will be involved in educating local businesses, primarily farms and ranches, as to the reporting requirement, and filling in the county disclosure forms for that business, then filing them with the counties.

The corporation will also provide training seminars on farm management of hazardous substances to prevent personal and/or environmental contamination (i.e., hydraulic fluid can no longer be dumped on the ground).

IV. Apparent Areas of Possible Conflict

1. Development of initial county reporting regulations. These regulations were developed by another division within OES. Many staff were asked to review them, including me. I provided a written review.

Statement of Corporate Intent, 2

2. Providing information to businesses on disclosure requirements. This is the responsibility of the county. OES would never be directly involved with a private business and is not required to promulgate information to them.
3. Developing disclosure statements for businesses. Corporate tasks involved here would be obtaining disclosure forms from the counties, meeting with farm/ranch/small business staff to identify reportable substances and their average amounts and storage locations, and filing in county disclosure statements accordingly. Forms would then be filed with the counties.

OES performs no tasks for private businesses, has no contracts to perform such work and, in no way, directly impacts the information gathered on the disclosure statements.

4. Training farm/ranch/small business staff. Training sessions will be directed at identifying ways to avoid personal/environmental contamination. Frequently, farmers/ranchers simply dump oil, hydraulic fluid and other materials on the ground. My corporation would advise them of the illegality of environmental dumping and suggest alternate disposal methods.

POLICY TITLE: CONFLICT OF INTEREST

REFERENCE NUMBER:

6T

DATE: March 1, 1985

COORDINATION:

CHIEF - ADMINISTRATION DIVISION

POLICY

The Political Reform Act, Government Code Section 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Adm. Code Section 18730, which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 1 Cal. Adm. Code Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the Office of Emergency Services.

Pursuant to Section 4(A) of the standard Code, designated employees shall file statements of economic interests with the agency. Upon receipt of the statement of the Director, the agency shall make and retain a copy and forward the original of this statement to the Fair Political Practices Commission.

CONFLICT OF INTEREST CODE FOR THE
OFFICE OF EMERGENCY SERVICES

APPENDIX

<u>Designated Employees</u>	<u>Disclosure Categories</u>
Director	1
Deputy Director	1
Assistant Directors	1
Information Officer	1
Regional Managers	1
Chief, Telecommunications Division	2A,D,E,F,G,H,I,M,R
Senior Coordinator, Telecommunications Division	2A,D,E,F,G,H,I,M,R
Chief, Radiological Division	2C,E,F,G,R
Radiological Defense Project Manager	2C,E,F,G,R
Chief, Planning Division	2A,B,C,D,E,F,G, H,I,J,K,L,M,R
Chief, Emergency Assistance Programs	2H,I,K,L,M,O,R
Emergency Services Coordinator II	2H,I,K,L,M,O,R
Emergency Assistance Programs	
Chief, Law Division	2A,B,F,G,I,O,P,R
Senior Coordinator, Law Division	2A,B,F,G,I,O,P,R
Chief, Fire and Rescue Division	2A,B,F,G,I,L,K,O,Q,R
Senior Coordinator, Fire and Rescue Division	2A,B,F,G,I,L,K,O,Q,R
Federal Financial Programs Manager	2A,D,H,I,L,M,R
Contract Managers: Nuclear Civil Protection and Disaster Preparedness Programs	2B,C,E,F,G,R
Training Manager	2E,F,G,I,R

Disclosure Categories

1. Designated employees in Category 1 shall report:

- (1) Any investments;
- (2) Any interests in real property;
- (3) Any income;

(4) Any California business entity in which the designated employee is a director, officer, partner, trustee, employee or holds any position of management (referred to in the Code as business positions).

2. Designated employees in Category 2 shall report:

(1) Any interests in real property; and

(2) Investments in any business entity, income from any source, and any California business entity in which the designated employee is a director, officer, partner, trustee, employee or holds any position of management; if the business entity or source of income engages in the manufacture, design, distribution or sale of the following:

- A. Communication Equipment
- B. Computer Equipment
- C. Word Processing Equipment
- D. Warning Systems Equipment
- E. Audio-Visual Equipment
- F. Training Aids
- G. Motion Picture and/or Television Equipment
- H. Construction Services or Materials
- I. Transportation Services or Equipment
- J. Office Equipment
- K. Building Maintenance Services
- L. Automotive Machinery and Equipment Maintenance
- M. Power Transmission Equipment
- N. Radiological Equipment
- O. Survival Equipment
- P. Law Enforcement Equipment
- Q. Fire Fighting Equipment
- R. Consultative Services in Emergency Services

AUTHORITY: Gov. Code Sections 87300, 87304

REFERENCE: Gov. Code Section 87300, et seq.

COST STATEMENT: These are "no cost" regulations under Revenue and Taxation Code Section 2231 and State Administrative Manual Section 6052.1, and involve no costs or savings to local, state or federal government under Gov. Code Section 11421.

APPROVED:


Director, Office of Emergency Services



California Fair Political Practices Commission

June 16, 1986

Ann C. Vasquez
7541 Clement Circle
Sacramento, CA 95823

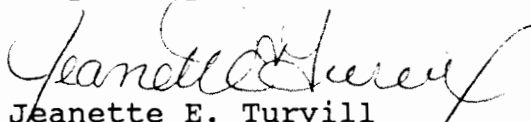
Re: 86-193

Dear Ms. Vasquez:

Your letter requesting advice under the Political Reform Act has been received on June 12, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,


Jeanette E. Turvill
Legal Assistant
Legal Division

JET:plh